



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-35
Regulation title	Certification Requirements for Mineral Miners
Action title	Amendments to allow for more efficient electronic certification and payment processes for mineral miners
Date this document prepared	August 8, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

In addition to a definitions section added for clarity, this regulatory action make a host of technical changes designed to allow for mineral miners to file for their required certifications electronically. One substantive change relates to the requirements for certification. Applicants for general mineral miner certification, or applicants for electrical certification who possess a valid master electrician card would not be required to take a written examination.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On August 8, 2012, the Department of Mines, Minerals and Energy adopted amendments to the regulation entitled Certification Requirements for Mineral Miners.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

§45.1-161.292:19A of the Code of Virginia directs DMME to issue certifications for mineral miners to ensure the health and safety of persons and property associated with mineral mining. §45.1-161.292:19C of the Code of Virginia grants DMME the authority to promulgate regulations necessary or incidental to the performance of its duties.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to amend the certification requirements for mineral miners to allow for electronic submission of certification forms. Doing so will allow DMME to more effectively and efficiently serve their customers.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This rulemaking is expected to be noncontroversial as the amendments are largely to clarify language and enhance the efficiency of the certification process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Appropriate sections of the existing regulation will be amended to allow for electronic submission of certification documentation. The regulation will also be amended to allow for payment of fees associated with certification to be submitted electronically.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public and the Commonwealth will be a more convenient, electronic permitting process. This process will create efficiencies for both DMME and the mineral mining industry. There are no known disadvantages.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that are more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality would be disproportionately affected.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulation allows for the maximum amount of flexibility as applicants will be able to file certification documents electronically as opposed to the existing paper-based requirement. This will also allow mineral mining companies to operate more efficiently. The Virginia Transportation Construction Alliance, an important industry stakeholder, supports the proposed regulation.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Any costs of implementation, which are expected to be minimal, would be absorbed by DMME.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	\$0. The minor changes to this regulation will not affect localities.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Applicants for certification and mineral mine operators in the commonwealth are the entities primarily affected by this regulation.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 433 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these (roughly 390) would qualify as small businesses.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of	Regulated entities can expect administrative cost savings from this proposed regulation. Each mineral mining operation must obtain training for their employees and this regulation would allow that process to be completed more efficiently.

<p>real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed regulation is designed to increase efficiency for DMME and the mineral mining industry by allowing for certifications to be processed electronically.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The only viable alternative to the regulatory action would be to leave the regulation as is. Doing so would not allow for DMME to serve its customers as efficiently as possible.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will have no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current	Proposed	Current requirement	Proposed change and rationale
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section number	new section number, if applicable		
N/A	5	N/A	A definitions section is added for clarity.
10.A.2	N/A	A copy of all degrees required.	Language changed to verification of all degrees required. This will allow DMME greater flexibility in administering the online certification program.
10.A.2	N/A	First aid cards shall be issued....	Cards changed to certifications. This change reflects the fact that proof of first aid training is provided electronically and a card is not always issued.
10.A.2	N/A	...the Division of Mineral Mining (DMM)	Language changed to division to reflect consistency with other department regulations. This change is made throughout the regulation.
20.A	N/A	...shall take a written examination	Written is stricken and a sentence added to allow DMM to specify the manner in which the examination will be given. This gives DMM the option to offer the examination electronically.
20.A	N/A	...applicants who hold a journeyman card.	The word valid is added for clarity. Card is changed to license and master electrician is added to reflect the fact that the training for that is comparable to that necessary for electrical certification for DMM.
40.C	N/A	...who have worked a cumulative minimum of 24 months...	Language is added to clarify the 24 months worked must be in the classification for which the worker is certified.
40.D	N/A	they have not worked in the area...	"Area" is changed to classification for clarity and precision.
60	N/A	Section title: Surface foreman	Language is added to clarify the section applies to those foremen whose duties include overseeing blasting activities.
70	N/A	Section title: Surface foreman, open pit	Language is added to specify the section applies to those foremen whose duties do not include overseeing blasting activities.
80.B	N/Aa valid record of three hours of training....	Language is changed to require a certificate which represents completion of an approved first aid course. This change adds precision and clarity to the first aid training requirements for surface blasters.
90.B	N/A	...a valid MSHA5000 form...	A similar change is made in this section, requiring underground blasters to possess a certificate representing completion of an approved first aid training course.
100.A	N/A	certification	The word is changed to license to accurately reflect DPOR's designation.
120.A.	N/A	"commencing work" means...	The definition is deleted here as it is listed in the definitions section above.